

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby amends Chapter 22, “Controlling Pollution,” and Chapter 33, “Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality,” Iowa Administrative Code.

The purpose of this rule making is to ensure that certain stationary sources of carbon dioxide (CO₂) emissions in Iowa are regulated in the same manner as specified in recently amended federal regulations.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 7, 2011, as **ARC 9736B**. A public hearing was held on October 11, 2011. The Department did not receive any comments at the public hearing. The Department received two sets of written comments before the close of the public comment period on October 11, 2011. The submitted comments and the Department’s response to the comments are summarized in the public responsiveness summary available from the Department. The Department did not make any changes to the adopted amendments from those published under Notice.

The U.S. Environmental Protection Agency (EPA) recently finalized regulations deferring for a three-year period the counting of CO₂ emissions from biological processes and materials (biogenic CO₂) toward Title V and PSD permitting thresholds. Biogenic emissions of CO₂ include fermentation processes at ethanol plants and combustion of biomass such as wood or other vegetative matter at power plants or industrial facilities.

During this deferral period, EPA plans to work in conjunction with federal partners, technical experts, and an independent scientific panel to conduct a comprehensive scientific assessment of biogenic CO₂ emissions from stationary sources. At the end of the deferral period, EPA either may decide to exempt CO₂ emissions from biogenic sources or may instead decide to include these emissions. If EPA decides to include CO₂ emissions from biogenic sources, it has indicated in the preamble to the federal regulations that it will not conduct a “look-back” at facilities that, during the deferral period, did not count CO₂ emissions from biogenic sources toward PSD applicability.

This rule making amends the state’s Title V and PSD air quality rules so that the state rules match the federal regulations deferring biogenic CO₂ emissions (see references to the corresponding federal amendments in the item statements below).

Failure to adopt these amendments would make Iowa’s administrative rules more stringent than federal regulations, which is prohibited by state law (Iowa Code section 455B.133(4)). Failure to adopt these amendments would also create regulatory uncertainty for sources that emit large amounts of biogenic emissions, such as ethanol plants and landfills, because biogenic CO₂ emissions would have to be considered in Iowa air permitting but may not be considered in other states’ permitting.

The Department has four pending permitting projects in-house that are potentially affected by this rule making. If biogenic CO₂ emissions are not deferred, these projects would very likely need to go through PSD review for greenhouse gas emissions.

Item 1 amends rule 567—22.100(455B), the definitions for the Title V program.

Title V requires that an affected facility obtain a Title V operating permit. The Title V operating permit, which is renewed every five years, contains all air emission control requirements that apply to the facility, including the requirements established through construction permitting.

Specifically, Item 1 revises the definition of “subject to regulation.” The amendment to this definition is identical to the federal amendment (see 40 CFR 70.2, definition of “subject to regulation,” as amended on July 20, 2011). The amendment states that CO₂ emissions from biogenic sources (explained in the amendment) are deferred from counting toward Title V program applicability for a period of three years, until July 21, 2014.

Item 2 amends the introductory paragraph of rule 567—33.1(455B) to update the date of the new federal PSD amendments being implemented through this rule making.

Item 3 amends subrule 33.3(1), the definitions for the PSD program.

New source review (NSR) is a federal term for review and preconstruction permitting of new or modified stationary sources of air pollution. The PSD program is a component of NSR that includes procedures to ensure that air quality standards are maintained. In general, the PSD program requires that an affected facility obtain a PSD permit specifying how the facility will control emissions. The permit requires the facility to apply Best Available Control Technology (BACT), which is determined on a case-by-case basis taking into account, among other factors, the cost and effectiveness of the control. The specific nature of the project determines whether it is subject to PSD requirements for greenhouse gases (GHGs).

Specifically, Item 3 amends the definition of “subject to regulation” for the PSD program. The definition includes the definition for “tpy CO₂ equivalent emissions (CO₂e).” The amendment to this definition is identical to the federal amendment (see 40 CFR 52.21(b)(49) as amended on July 20, 2011). The amendment states that CO₂ emissions from biogenic sources (explained in the amendment) are deferred from counting toward PSD program applicability for a period of three years, until July 21, 2014.

The amendments will confer a benefit to affected facilities in the state, such as ethanol plants and landfills. Several facilities with pending permitting projects are waiting to initiate construction in anticipation of final and effective amendments. Therefore, pursuant to the provisions of Iowa Code section 17A.5(2)“b”(2), the adopted amendments became effective immediately upon filing with the Administrative Rules Coordinator on November 16, 2011.

The jobs impact of these amendments cannot be determined. Insufficient information exists to determine what impact the amendments will have on private sector jobs and employment opportunities in the state. The Department requested stakeholder input and did not receive any information regarding job impacts in the state. However, affected facilities will experience reduced regulatory burden from these amendments because these facilities will not be subject to the Title V or PSD programs during the deferral period. Therefore, facilities affected by these amendments should experience a positive impact on jobs.

These amendments are intended to implement Iowa Code section 455B.133.

These amendments became effective on November 16, 2011.

The following amendments are adopted.

ITEM 1. Amend rule **567—22.100(455B)**, definition of “Subject to regulation,” numbered paragraph “2,” as follows:

2. The term “tpy CO₂ equivalent emissions (CO₂e)” shall represent an amount of GHGs emitted and shall be computed by multiplying the mass amount of emissions (tpy) for each of the six greenhouse gases in the pollutant GHGs by the associated global warming potential of the gas published at 40 CFR Part 98, Subpart A, Table A-1, “Global Warming Potentials,” (as amended on October 30, 2009) and summing the resultant value for each to compute a tpy CO₂e. For purposes of this definition, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

ITEM 2. Amend rule 567—33.1(455B), introductory paragraph, as follows:

567—33.1(455B) Purpose. This chapter implements the major New Source Review (NSR) program contained in Part C of Title I of the federal Clean Air Act as amended on November 15, 1990, and as promulgated under 40 CFR 51.166 and 52.21 as amended through ~~November 29, 2005~~ July 20, 2011. This is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under Part C of the Clean Air Act as amended on November 15, 1990. In areas that do not meet the national ambient air quality standards (NAAQS), the nonattainment NSR

program applies. The requirements for the nonattainment NSR program are set forth in 567—22.5(455B) and 567—22.6(455B). In areas that meet the NAAQS, the PSD program applies. Collectively, the nonattainment NSR and PSD programs are referred to as the major NSR program.

ITEM 3. Amend subrule **33.3(1)**, definition of “Subject to regulation,” numbered paragraph “2,” as follows:

2. For purposes of paragraphs “3,” “4,” and “5,” the term “tpy CO₂ equivalent emissions (CO₂e)” shall represent an amount of GHGs emitted and shall be computed as follows:

(a) Multiply the mass amount of emissions (tpy) for each of the six greenhouse gases in the pollutant GHGs by the associated global warming potential of the gas published at 40 CFR Part 98, Subpart A, Table A-1, “Global Warming Potentials,” (as amended on October 30, 2009), ~~and~~. For purposes of this definition, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

(b) Sum the resultant value from paragraph (a) for each gas to compute a tpy CO₂e.

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